

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

**EDWARD BUTOWSKY, in his personal
and professional capacities,**

Plaintiff,

v.

MICHAEL GOTTLIEB, *et al.*,

Defendants.

Case No. 4:19-cv-00180-ALM-KPJ

NOTICE OF STATUS BY
DEFENDANTS GOTTLIEB, GOVERNISKI AND BOIES SCHILLER FLEXNER LLP

On behalf of Mr. Michael Gottlieb, Ms. Meryl Governski, and Boies Schiller Flexner LLP (collectively, the “BSF Defendants”), I write to address the two fully briefed motions to dismiss filed by the BSF Defendants: (1) Motion to Dismiss Third Amended Complaint under the First-to-File Rule and Rules 12(b)(6), 12(b)(7), and 19 (Dkt. No 209; the “First-to-File Motion”) and (2) Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. No. 209; the “Personal Jurisdiction Motion”). The BSF Defendants respectfully suggest that the First-to-File and the Personal Jurisdiction Motions are ripe for determination and their resolution would promote judicial economy.

Mr. Butowsky filed his complaint against the BSF Defendants—the lawyers representing Mr. Aaron Rich against Mr. Butowsky in *Aaron Rich v. Butowsky et al.*, Case No. 1:18-cv-000681 (D.D.C.) (the “D.C. Litigation”), on March 12, 2019. *See* Dkt. No. 1. Shortly thereafter, the BSF Defendants, as attorneys for Mr. Rich, filed a Motion for Anti-Suit Injunction in the D.C. Litigation. *See* Dkt. No. 52, 1:18-cv-000681-RJL (D.D.C. Mar. 26, 2019).

And almost one year ago today, the BSF Defendants filed their first motion to dismiss Mr. Butowsky’s complaint. *See* Dkt. No. 41. Mr. Butowsky failed to timely respond to the BSF Defendants’ motion to dismiss. *See* Dkt. No. 58 at 1–2. Following a series of Plaintiff procedural errors that taxed both the Court and the parties’ time (*see, e.g.*, Dkt. Nos. 60, 61, 62, 68–71, 81–83, 87, 99, Oral Motion for Leave to Amend Complaint by Edward Butowsky dated July 31, 2019), the Court permitted Mr. Butowsky to file his Second Amended Complaint (Dkt. Nos. 100, 101). On August 14, 2019, the BSF Defendants filed their motions to dismiss to the Second Amended Complaint. *See* Dkt. Nos. 104 (First-to-File motion to dismiss the Second Amended Complaint), 105 (Personal Jurisdiction motion to dismiss as to the Second Amended Complaint).

After the Court reviewed the Second Amended Complaint, Mr. Butowsky’s Motion for Leave to Supplement the Complaint (Dkt. No. 192), and the pending motions to dismiss by all

defendants, it conducted a teleconference with the parties on March 3, 2020. *See* Dkt. No. 204. There, the Court discussed (among other topics), issues related to Fifth Circuit law on personal jurisdiction—as well as the multitude of incorporations by reference that appeared in Mr. Butowsky’s oppositions to the motions to dismiss and that appeared in the Second Amended Complaint itself. *See*, e.g., Minutes of March 3, 2020 Teleconference. As a result of the difficulties caused by Mr. Butowsky’s pleadings, the Court permitted a Third Amended Complaint—which mooted the long-pending motions to dismiss for a third round of motion to dismiss briefing. *See* Dkt. No. 204.

At around the same time, the BSF Defendants provided this Court with status updates regarding the pending Motion for Anti-Suit Injunction in the D.C. Litigation, noting the D.C. Court’s inquiries regarding the status of the BSF Defendants’ motions to dismiss, including the D.C. Court’s statement that it may soon act to grant the anti-suit injunction—but also sought, based on comity and deference, to avoid any unnecessary interference with this Court’s docket that could result from enjoining Mr. Butowsky from prosecuting his case here. *See*, e.g., Dkt. No. 203. Unfortunately, the delays resulting from Mr. Butowsky’s need to amend his complaint multiple times after motions to dismiss had been fully briefed, resulted in the D.C. Court granting the anti-suit injunction before this Court issued its prioritized determinations as to the BSF Defendants’ First-to-File and Personal Jurisdiction Motions. *See* Dkt. Nos. 206 (setting prioritized briefing schedule for the BSF Defendants’ motions to dismiss), 218 (Butowsky Notice of DC Order Enjoining Claims). Further, as the BSF Defendants apprised this Court (see Dkt. No. 239) Mr. Butowsky has appealed the D.C. Court’s anti-suit injunction, and it has been docketed with the United States Court of Appeals for the District of Columbia Circuit—but briefing has been deferred such that there is currently no briefing schedule for the appeal. *See* Exhibit A at 2, Order Dated May 8, 2020, No. 20-7042 (D.C. Circuit).

Based on the foregoing—and given the impending delay in resolving the appeal to the anti-suit injunction, as well as Judge Leon’s stated preference based on of comity and deference for this Court to have the opportunity to issue its decisions, the BSF Defendants contend that the interests of judicial economy weigh in favor this Court ruling on the BSF Defendants’ motions to dismiss. Further, the Court noted during the March 10, 2020 teleconference hearing that the BSF Defendants’ motion would be taken under advisement on the papers. Since then, the Court has also had the opportunity to hear from counsel for Mr. Butowsky at oral argument regarding Plaintiff’s view of personal jurisdiction law in the Fifth Circuit at the June 10, 2020 Motion to Dismiss hearing.

Additionally, as this Court is aware, the D.C. Court’s anti-suit injunction is an injunction on Mr. Butowsky—not on this Court—and thus the anti-suit injunction does not prevent this Court from issuing decisions on fully briefed motions ripe for resolution. In addition, Judge Leon’s rationales granting the anti-suit injunction provide additional support and reasoning in favor of granting the BSF Defendants’ First-to-File Motion to Dismiss. In the event this Court grants the First-to-File Motion (and/or the Personal Jurisdiction Motion), it would moot the anti-suit injunction in its entirety—including the pending appeal.

For these reasons, the BSF Defendants respectfully request that the Court issue an order dismissing this case as to the BSF Defendants based on the First-to-File Motion or, alternatively, dismissing this case based on the Personal Jurisdiction Motion.

Dated: July 6, 2020

/s/ Paul J. Skiermont

SKIERMONT DERBY LLP
Paul J. Skiermont (TX Bar No. 24033073)
Steven J. Udick (TX Bar No. 24079884)
1601 Elm Street, Suite 4400
Dallas, TX 75201
Tel: (214) 978-6600
Fax: (214) 978-6601
pskiermont@skiermontderby.com
sudick@skiermontderby.com

*Attorneys for Defendants Michael Gottlieb, Meryl
Gubernski, and Boies Schiller Flexner LLP*

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, a true and correct copy of the foregoing document was served on all parties of record via the Court's ECF filing system.

/s/ Paul J. Skiermont